

Employee Plans



Internal Revenue Service

Multi-Employer Pension Plan Determination and Examination Issues

before the IRS



Mission Statement

- The mission of the Tax Exempt and Government Entities Division is to provide our customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all.



Three Key Categories

- Rulings and Agreements – or assurance
- Examinations – or compliance
- Customer Education & Outreach – or communication



Multi-Employer Issues

- Funding Issues -- Legislation
Past and Future
- Amortization Extension Requests
under 412(e)
- Suspension of Benefits Issues
Resulting from Supreme Court
Decision in *Heinz* Case



Multi-Employer Issues

- Examination Program -- MAP Group
- Determination Letter Program Revisions' Impact on ME Plans



Funding Issues

- Pension Funding Equity Act (PFEA) enacted April 10, 2004
 - Five items of guidance re single employer plans
 - Final guidance on PFEA re multiemployer plan elections guidance to be published early 2005 -- see next slide
 - Limited application, but important for the few plans eligible to make election



Funding Issues

- Pension Funding Equity Act (PFEA) enacted April 10, 2004
 - Multiemployer plan elections guidance to be published early 2005
 - Election to defer 80% of 2002 loss that otherwise is charged in any PY beginning after 6/30/03 and before 7/1/05
 - Defer to either of 2 succeeding plan years after 2005



Funding Issues

- Pension Funding Equity Act (PFEA) enacted April 10, 2004
 - Multiemployer plan elections guidance to be published early 2005
 - Enrolled Actuary must certify on plan benefit increases
 - Impact 2004 filings (*e.g.*, 4/15/05 is earliest)
 - Notice to participants/beneficiaries required on election



Funding Issues

- Plan funding pressures from market downturn and low interest rates
 - Funding waivers often counterproductive
 - Problem won't just go away
 - Amortization extensions under 412(e) possible -- met practitioners
 - Question: Will fund be financially stronger?



Funding Issues

- Plan funding pressures from market downturn and low interest rates
 - Technical issues: Currently before Treasury and Office of Chief Counsel
 - Special interest rate for ME plans lower than valuation rate, generates credit for funding -- some concerns, consulting with Counsel
 - Will look for equal sharing of pain: contribution increases and benefit decreases
 - Plan: begin issuing extensions following memo clearance



Suspension of Benefits Issues

- Suspension of benefits provisions historically provided in plans
- Provisions broadened by many plans
- IRS held not a prohibited cut-back, permitted as forfeiture
- *Heinz* case -- Supreme Court contra -- prohibited cut-back
- IRS/Treasury now to address in regulations



Suspension of Benefits Issues

- Proposed 411(d)(6) reg. sec.
1.411(d)-3 for DB plans issued 3/04
 - Final regs expected early next year
 - Can eliminate redundant or non-core optional forms of benefit
 - Per EGTRRA, can reduce burdensome or complex early retirement benefits or retirement-type subsidies by de minimis amount



Suspension of Benefits Issues

- Proposed 411(d)(6) reg. sec.
1.411(d)-3 for DB plans issued 3/04
 - Defines early retirement benefit and retirement-type subsidy
 - Addresses case law
 - Shutdown benefits - follows Bellas, a change in IRS position
 - Post-retirement enhancements protected, contra Sheetmetal Workers
 - Can combine amendments, contra Riverside Cement



Suspension of Benefits Issues

- Proposed 411(d)(6) reg. sec.
1.411(d)-3 for DB plans issued
3/04
 - Likely more proposed regulations to address issues raised by *Heinz* case, *i.e.*, regarding permitted forfeitures, prohibited cut-backs



Suspension of Benefits Issues

- Proposed 411(d)(6) reg. sec.
1.411(d)-3 for DB plans issued 3/04
 - Plan also separate 7805(b) guidance on *Heinz* (Supreme Court footnote suggests this)
 - 7805(b) relief
 - Correction usually required, at least prospective, sometimes retroactive
 - Alaska exemption bill impact?



Examination Program -- MAP Group

- Multi-Employer Audit Program (MAP)
- FY 2004 -- audited 157 plans, closed 82 of these
- Actual/projected change rates -- significant non-compliance
- 24 agents in MAP, 9 also in EPTA



Examination Program -- MAP Group

- Trends & Issues -- Most frequent issues on closed and open exams were:
 - Plan requires a participation agreement to be signed by all employers whose employees are eligible to participate
 - 401(a)(9) violations
 - Accruals/service credit is dependent on employer contributions being made



Examination Program -- MAP Group

- Trends & Issues -- Most frequent issues on closed and open exams were:
 - Plan did not make required actuarial adjustments for benefit distributions
 - Delinquent/late contributions
 - Errors made to benefit calculations
 - 412 violations



Determination Letter Program

- Historical peaks and valleys
- Historical examination staff diverted to do determination letter applications
- Major changes:
 - Dedicated determination letter staff
 - Dedicated examination staff
 - Stabilized flow of determination letter applications
 - Specialization of staff for specialized plans



Plan Statistics 2003-04

TYPE OF PLAN	NUMBER OF PLANS	PARTICIPANTS	ASSETS
DB	26,000	20 MILLION	\$1.58 TRILLION
DC	840,000	64.3 MILLION	\$2.68 TRILLION
MULTI-ER	2,000		



Plan Statistics 2003-04

- Government Plans -- 2,200 systems, 14 million participants, 1.97 trillion assets
- IRAs -- 2.33 trillion assets, 3.5 million returns/deductions (2.7%)
- Social Security -- 42 million beneficiaries



Implementation of New Determination Letter Program

- Extensive mathematical modeling of new system
- Timeline for implementation
- Published draft revenue procedure describing revised DL program for comment in September; final by March 2005



Implementation of New Determination Letter Program

Publication Timeline

Publish draft Staggered RAP cycle Rev. Proc.	9/2004
90 day comment period for draft Staggered RAP cycle Rev. Proc.	12/2004
Publish Cumulative List for opening of DC 6-year cycle	11/2004
Publish final Staggered RAP cycle Rev. Proc.	3/2005



Implementation of New Determination Letter Program

Cycle	Begins	Ends
6-years for DC pre-approved	2/1/2005	1/31/2006
5-year staggered for Cycle A	2/1/2006	1/31/2007
5-year staggered for Cycle B	2/1/2007	1/31/2008

Timeline for Opening EGTRRA RAP



Implementation of New Determination Letter Program

Cycle	Begins	Ends
6-years for DB pre-approved	2/1/2007	1/31/2008
5-yr staggered for Cycle C	2/1/2008	1/31/2009
5-yr staggered for Cycle D	2/1/2009	1/31/2010
5-yr staggered for Cycle E	2/1/2010	1/31/2011

Timeline for Opening EGTRRA RAP



Implementation of New Determination Letter Program

- Multi-Employer Plans?
 - Initial approach for all ME plans in Cycle A
 - *Heinz* changes likely impact many ME plans and take several years
 - Consider all ME plans in Cycle C (1/31/09 end of RAP)? Please comment on this!



Implementation of New Determination Letter Program

- Implications of new program for multi-employer plans
 - Submit application every five years
 - May submit more often if desired, but still would need to apply on cycle
 - RAP ends on set date, regardless of whether application submitted during cycle



Future of the Determination Letter Program

- Cumulative List of Changes in Plan Qualification Requirements
 - Published around November 15th every year!
 - Determines what Service reviews in applications filed in applicable cycle -- between 2/1 of the following calendar year and 1/31 of the *second* following calendar year



Future of the Determination Letter Program

- Cumulative List of Changes in Plan Qualification Requirements
 - Lists all required legislative/guidance changes
 - Prior good faith amendments may have been required (samples may be provided)
 - Operational compliance likely will have been required



Contact Information

Share your views with us.

- Paul Shultz
202-283-9663
Paul.T.Shultz@irs.gov
- Robert Bell
513-263-3567
Robert.P.Bell@irs.gov
- Gary Runge
513-263-3553
Gary.L.Runge@irs.gov

E-mail is the preferred method of contact.

Technical Questions? Call our
Customer Account Services on
1-877-829-5500; phone preferred.

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available at www.irs.gov/ep

